Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
http://www.psc.mo.gov

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration and Regulatory Policy

ROBERT SCHALLENBERG
Director, Utility Services

WARREN WOOD
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

June 22, 2007

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

RE: USF Certification Pursuant to 47 USC 254(e)
CC Docket No. 96-45 and WC Docket No. 06-64

Dear Ms. Dortch:

On May 3, 2007, the Missouri Public Service Commission ("MoPSC") granted the request of USCOC of Greater Missouri, LLC, SAC No. 429007, ("US Cellular") to be designated as an eligible telecommunications carrier ("ETC") in the State of Missouri under the provisions of 47 CFR 54.201(d). ETC designation is effective May 13, 2007. (A copy of the order is attached.)

In addition, the MoPSC hereby certifies that US Cellular will use its high-cost universal service support in accordance with Section 254(e) of the Telecommunications Act of 1996 (47 USC § 254(e) 1996). This certification applies to support that will be received by US Cellular from the effective date of the ETC designation, May 13, 2007, through the end of Calendar Year 2007.

Sincerely,

Jeff Davis
Chairman

Enclosure (1)

JD/nd

cc: Irene Flannery
Universal Service Administrative Company
2000 L Street, NW-Suite 200
Washington, DC 20036

No. of Copies rec'd 0
List ABCDE

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996	))))	**Case No. TO-2005-0384**

REPORT AND ORDER

Issue Date: May 3, 2007

Effective Date: May 13, 2007

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996	))))	**Case No. TO-2005-0384**

Table of Contents

Appearances

Karl Zobrist, Sonnenschein, Nath & Rosenthal, LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111

and

David A. LaFuria and Steven M. Chernoff, Lukas, Nace, Gutierrez & Sachs, Chtd., 1650 Tysons Boulevard, Suite 1500, McLean, Virginia 22101

for USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular.

Charles Brent Stewart, Stewart & Keevil, L.L.C., 4603 John Garry Drive, Suite 11, Columbia, Missouri 65203, for Spectra Communications Group, LLC, d/b/a CenturyTel and CenturyTel of Missouri, LLC.

Robert Gryzmala, Senior Counsel, One SBC Center, Room 3516, St. Louis, Missouri 63101, for Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri.

W.R. England, III and Brian T. McCartney, Brydon, Swearengen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for the Small Telephone Company Group.

Michael F. Dandino, Senior Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

William K. Haas, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Morris L. Woodruff, Deputy Chief Regulatory Law Judge

REPORT AND ORDER

Syllabus: This Report and Order finds that U.S. Cellular has met all requirements of federal and state law and designates it as an eligible telecommunications carrier throughout its Missouri service area.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On April 22, 2005, USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, filed an application asking to be designated as an Eligible Telecommunications Carrier (ETC), pursuant to federal law. As an ETC, U.S. Cellular asks to be designated as eligible to receive all available support from the federal Universal Service Fund, including support for rural, insular, and high cost areas, and low-income customers.

On April 26, 2005, the Commission directed that notice of U.S. Cellular's application be given to all incumbent and competitive local exchange carriers certificated to provide service in Missouri, as well as to the news media and the members of the General Assembly. The Commission established May 16, 2005, as the deadline for submission of requests to intervene. Thereafter, on May 27, 2005, the Commission granted applications to intervene filed by Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (AT&T Missouri);[1] Spectra Communications Group, LLC, d/b/a CenturyTel, and CenturyTel of Missouri, LLC (collectively CenturyTel); and the Small Telephone Company Group (STCG).[2]

Each of the parties offered prefiled testimony. An evidentiary hearing was held on October 26 and 27, 2005. After considering the evidence that was offered at the hearing, the Commission found that U.S. Cellular had not presented sufficient evidence regarding how it intends to use the support it would receive from the Universal Service Fund to improve its network through improved coverage, signal strength, or capacity, in ways that would not otherwise occur without the receipt of high cost support. Rather than reject U.S. Cellular's application, the Commission issued an order on March 21, 2006, that allowed U.S. Cellular an opportunity to submit additional evidence on that issue. The Commission indicated that it would not further consider U.S. Cellular's application until that additional evidence was submitted.

U.S. Cellular submitted additional evidence regarding its plans on August 11, 2006. Thereafter, the Commission established a procedural schedule that allowed all parties an

---

[1] Southwestern Bell Telephone, L.P. is now doing business as AT&T Missouri and will be referred to as such in this report and order.

[2] The members of the Small Telephone Company Group are as follows: BPS Telephone Company; Choctaw Telephone Company; Craw-Kan Telephone Cooperative, Inc.; Ellington Telephone Company; Farber Telephone Company; Fidelity Telephone Company; Goodman Telephone Company; Granby Telephone Company; Grand River Mutual Telephone Corporation; Holway Telephone Company; IAMO Telephone Corporation; Kingdom Telephone Company; Le-Ru Telephone Company; Mark Twain Rural Telephone Company; Mid-Missouri Telephone Company; Miller Telephone Company; New Florence Telephone Company; New London Telephone Company; Northeast Missouri Rural Telephone Company; Orchard Farm Telephone Company; Peace Valley Telephone Company, Inc.; Seneca Telephone Company; Steelville Telephone Exchange, Inc.; and Stoutland Telephone Company.

opportunity to file responsive testimony. An additional hearing was held on December 18 and 19, 2006. The parties submitted post-hearing briefs on January 31, 2007.

The Federal Universal Service Fund

The federal Universal Service Fund was established in the Telecommunications Act of 1996. The stated purpose of the fund is to ensure that telephone customers in rural and high cost areas, as well as low-income customers, have access to quality telecommunications services at reasonable and affordable rates.[3] To meet that goal, the Universal Service Fund redistributes money paid into the fund by telecommunications customers to telecommunications service providers who serve rural and high cost parts of the country.

Before a telecommunications service provider is eligible to receive funding from the Universal Service Fund, it must be designated as an Eligible Telecommunications Company, referred to by the acronym ETC. Various incumbent local exchange carriers in rural parts of Missouri, competitive local exchange carriers serving those areas, and wireless telecommunications carriers have already been designated as an ETC, and currently receive funding from the federal Universal Service Fund. U.S. Cellular, a provider of wireless telecommunications service,[4] has now applied for designation as an ETC in its service area.

The Requirements for Designation as an ETC

The Telecommunications Act established two factual criteria for determining whether an applicant may be designated as an ETC. First, the applicant must offer the services that

[3] 47 U.S.C. 254(b).

[4] As a provider of wireless service U.S. Cellular can be described as a commercial mobile radio service (CMRS) provider.

are supported by the Universal Service Fund throughout the service area for which the designation is received. The applicant can offer those services either through its own facilities, or a combination of its own facilities and the resale of another carrier's services. Second, the applicant must advertise the availability of such services and the charges therefore using media of general distribution.[5]

The Federal Communications Commission has designated, by regulation, nine services that are supported by the Universal Service Fund.[6] The nine services designated for support are as follows: (1) Voice grade access to the public switched network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to emergency services; (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualifying low-income consumers.

U.S. Cellular represents in its application that it is a "full-service wireless carrier, which offers all of these services within the State of Missouri".[7] Testimony presented by U.S. Cellular's witness, Kevin Lowell, established that U.S. Cellular offers the nine designated services in Missouri.[8] U.S. Cellular also represents that if it is granted ETC status it will immediately advertise the availability of its services throughout its service

[5] 47 U.S.C. 214(e)(1).

[6] 47 CFR 54.101(a).

[7] *Application of USCOC of Greater Missouri, LLC ("U.S. Cellular") for Designation as an Eligible Telecommunications Carrier*, page 5.

[8] Lowell Direct, Ex. 4, pages 2-4.

area.[9] Staff's witness, Adam McKinnie, confirmed that U.S. Cellular offers the nine-designated services.[10]

The parties that challenge U.S. Cellular's application do so by arguing that U.S. Cellular fails to offer its services *throughout* the territory for which it seeks ETC designation. U.S. Cellular requests that it be given ETC designation throughout a large portion of Missouri, excluding only the west central portions of the state, centering on the Kansas City area. The proposed ETC designation would include the exchanges served by many incumbent local exchange companies (ILECs). The parties opposing U.S. Cellular's application offered extensive testimony demonstrating that U.S. Cellular is not capable of providing facilities-based wireless service in many of the ILEC study areas for which it is seeking ETC status.

U.S. Cellular concedes that its present facilities cannot provide wireless service to all of the ILEC study areas for which it is seeking ETC designation. For those areas that it cannot reach with its own facilities, U.S. Cellular proposes to serve any customer who requests service through what it described as a six-step process.

Under the six-step process, U.S. Cellular commits to provide service to a requesting customer within a reasonable period of time if service can be provided at reasonable cost by:

(1) modifying or replacing the requesting customer's equipment;
(2) deploying a roof-mounted antenna or other equipment;
(3) adjusting the nearest cell tower;
(4) adjusting network or customer facilities;
(5) reselling services from another carrier's facilities to provide service; or

[9] Wright Direct, Ex. 5, page 5, lines 16-22.

[10] McKinnie Rebuttal, Ex. 9, page 3, lines 18-20.

(6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.[11]

The maps showing U.S. Cellular's current wireless coverage reveal that the company will be able to serve many potential customers only by reselling wireless service from other wireless companies. U.S. Cellular would serve those customers through roaming agreements that it has in place with other wireless carriers.[12] Even though they would be served through facilities owned by another carrier, such customers would pay for service based on U.S. Cellular's rate plans.[13] If providing service to a customer through a roaming agreement costs more than U.S. Cellular could recover from the customer under its rate plan, U.S. Cellular would absorb the extra cost.[14]

The STCG, CenturyTel, AT&T Missouri, and Public Counsel contend that offering service only by resale in large portions of its proposed ETC territory does not allow U.S. Cellular to meet the requirements for certification. In particular, the STCG points to 47 CFR §54.201(i), which states that a state commission cannot designate as an ETC a carrier that offers the supported services "exclusively through the resale of another carrier's services." On the basis of that regulation, the STCG argues that U.S. Cellular cannot be designated as an ETC in those portions of its requested service area for which it cannot currently offer services using its own facilities.

The Commission rejects the interpretation of the regulation proposed by the STCG. Such an interpretation conflicts with the clear language of 47 U.S.C. 214(e)(1), which

---

[11] Wright Direct, Ex. 5, page 8, lines 4-9.

[12] Transcript, page 544.

[13] Transcript, page 545.

[14] Transcript, page 546.

specifically allows for the designation of a carrier that offers the supported services using a combination of its own facilities and resale of another carrier's services. There is nothing in that statute that would require the Commission to examine U.S. Cellular's current ability to provide facilities-based wireless service in each exchange before granting it designation in a larger service territory.

In support of its argument that would preclude designating U.S. Cellular as an ETC in ILEC study areas in which it does not currently provide signal coverage, the STCG refers to decisions made by this Commission in earlier cases. The first case cited by the STCG is a 2001 decision designating ExOp of Missouri as an ETC in the Kearney, Missouri exchange.[15] ExOp was a wireline service provider that offered service using its own facilities only in the Kearney exchange. There was no indication that ExOp offered services in any other exchange by resale. Nevertheless, ExOp sought designation as an ETC in all 184 exchanges in which it held a certificate to provide service. The Commission limited its designation of ExOp as an ETC to the Kearney exchange, finding that the Telecommunications Act "requires that a carrier both offer and advertise the services in question throughout its designated service area *upon designation*."[16]

The STCG also cites a more recent ETC decision regarding the application of Missouri RSA No 5 Partnership.[17] In that case, the Commission excluded a particular wire

---

[15] *In the Matter of the Application of ExOp of Missouri, Inc. for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support*, Commission Case No. TA-2001-251, Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, issued May 15, 2001.

[16] Id. (emphasis in original).

[17] *In the Matter of the Application of Missouri RSA No. 5 Partnership for ETC Designation*, Case No. TO-2006-0172, Report and Order, issued September 21, 2006.

center from the company's designated ETC area when it found that the company could not provide wireless service to that exchange.

The Commission's decision in both the ExOp and Missouri RSA No. 5 Partnership cases can be distinguished from this case. In the ExOp case, the Commission specifically found that ExOp had "not shown that it will both offer and advertise the services in question in a larger area upon designation."[18] ExOp had installed wires in only one exchange and it did not demonstrate an intention to provide service by resale in other exchanges. Similarly, in the Missouri RSA No. 5 Partnership case, the Commission specifically found that the applicant "admitted that it would most likely have to report to the Commission that it could not serve those customers outside its service area if they requested service."[19] By contrast, in this case, U.S. Cellular has demonstrated the ability and the intention to offer services throughout the proposed area either using its own wireless signal or through resale.

U.S. Cellular has met the requirements of 47 U.S.C. 214(e)(1), which do not require U.S. Cellular to demonstrate its ability to provide *facilities-based* service in every exchange in which it requests designation as an ETC. The Commission will not attempt to impose a requirement that is not imposed by the controlling statute.

As a practical matter, the designation of U.S. Cellular as an ETC in exchanges in which it currently does not offer facilities-based service does not provide an unfair advantage to U.S. Cellular, nor does it unfairly disadvantage any of its competitors. This is true because, as an ETC, U.S. Cellular will receive universal service support only for those

[18] Id.

[19] Id.

customers whom it serves over its own wireless network. It does not receive such support for customers it serves by resale of the services of other carriers.[20] In other words, U.S. Cellular cannot receive support from areas in which it does not have wireless coverage. Therefore, U.S. Cellular has a strong and appropriate incentive to expand its wireless coverage area to obtain more support.

By contrast, restricting U.S. Cellular's designation as an ETC to areas where it already provides facilities-based service would be unfair to U.S. Cellular and would impose an unnecessary administrative burden on the Commission and its Staff. If the Commission were to limit the ETC designation in that way, U.S. Cellular would have to come back to the Commission every time it was ready to expand its wireless coverage area into a new, previously undesignated exchange, resulting in the relitigation of the same issues over and over again.[21] Furthermore, U.S. Cellular can only offer its Lifeline services to low-income customers in an area if it has been designated as an ETC for that area. Therefore, designating U.S. Cellular as an ETC in an area may provide a benefit to the low-income residents of that area, even if U.S. Cellular cannot serve that customer over its own network.

Is U.S. Cellular's Application Consistent with the Public Interest?

Section 214(e)(2) of the Telecommunications Act requires that before designating an additional carrier as an ETC for an area served by a rural telephone company, the State Commission is required to find that the designation is in the public interest. Similarly, the Commission's regulation provides that the applicant for ETC designation must demonstrate

[20] Transcript, page 216, lines 4-6.

[21] Transcript, page 784, lines 14-22.

"that the commission's grant of the applicant's request for ETC designation would be consistent with the public interest, convenience and necessity."[22] Therefore, the Commission must determine whether granting U.S. Cellular ETC status is in the public interest.

U.S. Cellular contends that designating it as an ETC would serve the public interest by: 1) advancing universal service in Missouri by increasing the choices available to consumers; 2) offering affordable service; 3) improving service quality; 4) expanding the health and safety benefits that accompany cell phone service; 5) delivering economic development benefits to rural Missouri; and 6) stimulating a competitive response from the existing rural ILECs. In addition, U.S. Cellular contends that designating it as an ETC would not increase the existing burden on the federal universal service support mechanism.

U.S. Cellular has put together a list of benefits that would result from an expansion of cell phone service that could follow if it is designated as an ETC. Clearly, expansion of cell phone service would benefit consumers by giving them an additional option for phone service, by allowing them additional mobility, and by affording them increased safety while on the road or otherwise away from the end of a telephone wire. Indeed, most of the benefits U.S. Cellular describes are self-evident. The other parties do not disagree with the general idea that expanding the availability of cell phone service in rural Missouri would be a good thing. However, they argue, for various reasons, that designating U.S. Cellular as an ETC would not be in the public interest.

[22] 4 CSR 240-3.570(2)(A)5.

Is Competition a Good Thing? And Does Effective Competition Already Exist?

Several parties argue that effective competition for wireless service already exists in rural areas of the country, and indeed, U.S. Cellular concedes that it currently faces wireless competition in all areas that it serves in Missouri.[23] Furthermore, they argue that while increased competition may be desirable in the abstract, increased competition in a high cost rural area that is subsidized by universal service funding may not ultimately benefit consumers. The concern is that the federal universal service fund would be required to support multiple ETCs in a fixed cost market, causing the cost of service to increase for each of the providers on a per customer basis.[24] In other words, the cost of providing telecommunications services to a high cost area would remain the same, but the customers from whom those costs could be recovered would be split between competing providers, reducing the amount that could be recovered by each competitor.

The arguments against encouraging competition in rural areas are interesting, but not persuasive. The Commission certainly expects that competition and support from the federal USF will encourage wireless carriers to expand into underserved and non-served portions of rural Missouri. But most importantly, the idea of excluding wireless carriers from ETC designation with the intent to block competition in rural areas is inconsistent with the Telecommunications Act of 1996. Section 253(b) of that Act provides that a state may impose requirements necessary to preserve and advance universal service and protect the

---

[23] Transcript, Page 64, lines 5-8.

[24] Schoonmaker Direct, Ex. 15, Page 54, lines 12-17.

public welfare, but may do so only "on a competitively neutral basis."[25] Therefore, the Commission may not reject U.S. Cellular's application in an effort to stifle competition.

Is U.S. Cellular Really Expanding the Area It Serves?

Some parties argue that the areas in which U.S. Cellular proposes to build additional cell towers using USF funding are mostly areas in which it currently provides service, not more rural areas that are not currently served.[26] In other words, they contend that U.S. Cellular is merely trying to improve the service it currently provides, and will not benefit customers who are not already served.

However, U.S. Cellular's proposed new cell sites will provide coverage to some areas that currently do not receive any coverage and will provide improved coverage to areas that need it.[27] All new cell sites are located in rural areas that are relatively low in population density.[28] As U.S. Cellular's witness explained, a wireless carrier cannot simply place a new cell tower in the midst of a large unserved area without regard to coverage, capacity, hand-off capabilities and back-haul requirements. Rather, U.S. Cellular's expansion plan is an attempt to responsibly expand its footprint, while using a sound wireless network design.[29]

Are U.S. Cellular's Offerings Affordable?

Some parties argue that the rates that U.S. Cellular has proposed to offer, particularly its Lifeline offerings, are not as affordable as the rates and Lifeline offerings of

---

[25] 47 U.S.C. 253(b).

[26] Brown Supplemental Rebuttal, Ex. 30, page 6, lines 23-27; Stidham Supplemental Rebuttal, Ex. 32, page 3, lines 18-21.

[27] Johnson Supplemental Surrebuttal, Ex. 26, page 4, lines 14-17.

[28] Id., page 7, lines 8-11.

[29] Id., pages 4-5, lines 24-25, 1-3.

the incumbent wireline LECs. Of course, U.S. Cellular is offering a competitive service in a competitive market so this Commission does not need to be concerned about the affordability of its rates in general. If it prices the services it offers above the price set by the market, it will not attract customers. If it does not gain customers, it will not receive support from the universal service fund.[30] In any event, this Commission is preempted by federal law from regulating the rates charged for wireless service.[31] The question of the affordability of U.S. Cellular's Lifeline offerings is more interesting.

Federal regulations require an ETC to make Lifeline service available to qualifying low-income consumers.[32] The ETC is also required to effectively advertise the availability of its Lifeline service.[33] Low-income consumers who receive Lifeline service pay reduced charges for basic telecommunications services.[34]

U.S. Cellular has committed to offer a $25 per month, 400 minutes of anytime usage plan as its least expensive Lifeline service offering.[35] That plan has a nation-wide calling scope, excluding Alaska and Hawaii, subject to roaming charges and a two-year service commitment.[36] Calls made to anywhere in the lower 48 states would not be subject to additional toll charges.[37] Lifeline customers may also subscribe to any other calling plan

---

[30] Transcript, pages 209-210, lines 18-25, 1.

[31] 47 U.S.C. 332(c)(3).

[32] 47 C.F.R. 54.405(a).

[33] 47 C.F.R. 54.405(b).

[34] 47 C.F.R. 54.401(a)(2).

[35] Transcript, page 532, lines 17-25.

[36] Transcript, page 534, lines 4-18.

[37] Transcript, page 110, lines 2-3.

that U.S. Cellular offers and receive an $8.25 per month discount.[38] U.S. Cellular reports that its most popular plan among Lifeline customers is a $39.99 plan that offers greater access.[39]

The incumbent wireline LECs offer less expensive basic service plans that offer unlimited local calling.[40] However, the plan offered by U.S. Cellular is fundamentally different than the basic plans that are offered by its wireline competitors. The basic plans offered by wireline companies offer unlimited local calling, but the number of lines that can actually be reached without incurring toll charges may be very limited. For example, residential customers of Holway Telephone Company pay a base rate of $13.00 per month for a local calling area that includes only two exchanges with 495 residential and 54 business customers.[41] If those customers want to call a number outside those small areas, they must pay toll charges. In contrast, a customer who chooses to purchase a basic plan from U.S. Cellular can make calls outside their own community, to the next town, or coast to coast, without incurring additional toll charges. When the expanded calling area provided by the wireless plans is considered, the basic rates offered by U.S. Cellular are at least as affordable as the basic offerings of the competing incumbent LECs. Giving consumers a greater choice in the type of telephone service they can purchase at affordable prices is a good result and clearly is in the public interest.

---

[38] Transcript, page 536, lines 9-12.

[39] Transcript, page 536, lines 13-16.

[40] Exhibit A to Wood Supplemental Surrebuttal, Ex. 27, is a chart showing the basic phone service offerings of the various ILECs that are competing in the area served by U.S. Cellular.

[41] Wood Supplemental Surrebuttal, Ex. 27, Exhibit A.

Would U.S. Cellular Make Improvements Even without USF Funding?

Some parties argue that granting U.S. Cellular's application is not in the public interest because U.S. Cellular has not demonstrated that the network improvements it has proposed would not occur absent the receipt of high cost support.

In its initial application, U.S. Cellular indicated that it would use the high cost support it received to build new wireless cell sites and other facilities in sixteen specified high cost areas that were in need of improved signal coverage.[42] It committed to build these new facilities within 18 months after it was designated as an ETC.[43] After the initial hearing, the Commission found that U.S. Cellular had not presented sufficient evidence to show how it intended to use the support it would receive from the Universal Service Fund to improve its network. In an order issued on March 21, 2006, the Commission ordered U.S. Cellular to submit additional information on how it would use the funds it would receive if granted ETC status.

After March 21, 2006, a new Commission rule establishing filing requirements for applications to be designated as an ETC went into effect. A portion of that new rule, 4 CSR 240-3.570(2)(A)2, requires an applicant for designation as an ETC to submit a two-year plan "demonstrating with specificity, that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted." On August 11, 2006, U.S. Cellular submitted a new two-year build-out plan to comply with the Commission's ETC rule, as well as the Commission's March 21, 2006 order.

[42] Exhibit E to Application filed April 22, 2005.

[43] Transcript, page 120, lines 8-10.

In its new build-out plan, U.S. Cellular commits to build 39 new cell towers in the first two years following the granting of ETC status. U.S. Cellular will also use USF funds to operate and maintain the new cell sites, as well as upgrade switching infrastructure needed to support the new cell sites.[44] U.S. Cellular explains that it maintains a list of cell sites that will need to be constructed in the future as its cellular network expands. Those cell sites are first prioritized and then U.S. Cellular determines which sites can be built consistent with the company's business plan. It refers to those sites as being above the line because they can be built without support from the USF. The sites that fall below the line cannot be economically built without USF support. U.S. Cellular represents that it will use USF funding to build those below-the-line cell sites.[45]

U.S. Cellular's critics, including the Commission's Staff, contend that U.S. Cellular has failed to prove that the 39 cell sites it proposes to build with USF funds would not otherwise be built with U.S. Cellular's own funds. Indeed, it would not be in the public interest to allow U.S. Cellular to spend USF funds, rather than its own funds, while not increasing the number of sites that it will construct. Such a result would simply enrich U.S. Cellular's shareholders without any benefit to its Missouri customers.

U.S. Cellular's plans are problematic because the company is unable to draw a clear distinction between cell sites that can be built without support and those that can be built only with such support. It does not, and realistically cannot, maintain separate lists of sites

[44] Compliance Filing of U.S. Cellular, August 11, 2006.

[45] Transcript, page 587, lines 7-11.

that can be built with or without USF support.[46] As U.S. Cellular's witness, Nick Wright, explains:

> U.S. Cellular is going to build some facilities in Missouri, irrespective whether it receives high-cost support. But it is not going to build facilities out to rural areas of Missouri nearly as fast as it would if it does receive high-cost support. If a community would most likely not see new or improved wireless coverage in the next 4 to 5 years, then using high-cost support next year to expedite service to that area will be enormously beneficial to that community.[47]

If all or most sites are going to be built eventually with or without USF support, it will be difficult for the Commission to determine whether U.S. Cellular is appropriately spending the support it receives, or whether it is using the money to build cell sites in low-cost areas such as St. Louis, or, simply pocketing the money for the benefit of its shareholders, while building cell sites that it would have built anyway.

U.S. Cellular nicely illustrated this problem by its actions between the time it filed its initial application and the time it filed its new two-year build-out plan. In its initial application, U.S. Cellular indicated an intention to use USF funds to build sixteen cell sites, while representing that none of these sites could economically be constructed without high-cost support. By the time it filed its two-year build-out plan a year and a half later, four of those sixteen sites had in fact already been built, without the benefit of USF support.[48]

U.S. Cellular explained that it needed to build the four new cell sites earlier than planned because they had to be pushed up the priority list to shorten existing microwave hops, or because of a need to meet changing competitive conditions and to provide better

---

[46] Transcript, page 585, lines 8-22.

[47] Wright Supplemental Surrebuttal, Ex. 25, page 4, lines 6-10.

[48] McKinnie Supplemental Rebuttal, Ex. 29, page 12, lines 23-25.

service to its customers.[49] There is no reason to doubt U.S. Cellular's explanation of why those four sites were built. But the building of those sites brings into focus the problem with U.S. Cellular's two-year build-out plan. It will be very difficult for the Commission to determine whether a particular cell site would have been built anyway, even without USF support.

U.S. Cellular already builds new cell sites throughout urban and rural portions of Missouri without receiving USF support. If it were known how much U.S. Cellular currently spends without USF support, the Commission could establish that level of spending as a base line and require U.S. Cellular to spend the funds it receives from the USF in addition to its base line spending. U.S. Cellular's witness, Alan Johnson, was able to testify to U.S. Cellular's average capital expenditures for construction of cell sites in its Missouri market, excluding St. Louis and the Joplin area, since 2003. Later, another U.S. Cellular witness, Nick Wright, testified that U.S. Cellular is spending an average of $15-16 million on construction of cell sites each year.[50] However, the level of expenditures has fluctuated a great deal from year to year.[51] Wright did, however, testify that U.S. Cellular would commit to spending any USF funding that it receives dollar for dollar over and above what it would otherwise spend.[52]

One solution to the problem of ensuring that U.S. Cellular spends USF funding in addition to, rather than instead of its own investment money would be to establish an investment base line to ensure that U.S. Cellular spends its USF funding appropriately.

---

[49] Johnson Supplemental Surrebuttal, Ex. 26, page 13, lines 3-16.

[50] Transcript, page 758, lines 19-20.

[51] In-Camera Transcript, pages 732-733. The amount of dollars spent each year is highly confidential.

[52] Transcript, page 758, lines 6-7.

However, the establishment of a reliable base line is difficult because a wireless carrier's capital budget can vary greatly from year to year.[53] Indeed, U.S. Cellular's capital budget has shown such variation in recent years.[54] Nevertheless, if the Commission is to ensure that U.S. Cellular is spending its USF funding appropriately, it will need to establish such a base line.

In recognition of the variability of U.S. Cellular's investment spending, the Commission will establish a two-year average base line of $15 million per year, which is the amount that U.S. Cellular currently invests for construction of cell sites in its Missouri market, excluding St. Louis and the Joplin area, without wireless support. If U.S. Cellular invests less than $15 million in the first year, it will need to increase its spending in the second year to bring the average for the two years up to the base line amount. If U.S. Cellular fails to comply with the base line investment requirement, the Commission will refuse to recertify U.S. Cellular to receive further USF funding and may seek the return of funds previously paid. In addition, the Commission may seek penalties against U.S. Cellular under Section 386.570, RSMo 2000, for violation of the Commission's order.

Telephone customers in rural Missouri will benefit from the designation of U.S. Cellular as an ETC. If, because of a fear of uncertainty, the Commission simply refuses to designate U.S. Cellular as an ETC, those benefits would be denied to rural Missourians. On balance, the Commission finds that the detailed, after-the-fact, demonstration of how it spent USF funding, along with the establishment of an investment base line, will be sufficient to ensure that U.S. Cellular spends its USF funds appropriately.

---

[53] Johnson Supplemental Surrebuttal, Ex. 26, page 16-17, lines 18-27, 1.

[54] In-Camera Transcript, pages 732-733.

Would Designating U.S. Cellular as an ETC Create a Burden on the USF System?

Some of the parties argue that designating U.S. Cellular as an ETC would not be in the public interest because designating yet another company as an ETC would create a burden on the USF system.

There is concern that the USF is rapidly expanding and that ultimately it could be forced to limit payments to the various ETCs.[55] The amount of USF funding that U.S. Cellular would receive in Missouri is only a small percentage of the very large amount of funding that is disbursed nationwide through the USF. Therefore, granting ETC status to U.S. Cellular in Missouri would not have an appreciable impact on the USF system as a whole. But each state's decision to grant ETC status to a new carrier does have an impact on the total usage of the system, and the Commission should consider the impact on the total system as it considers U.S. Cellular's application.

Fortunately, U.S. Cellular's impact on the overall USF system is limited by the manner in which the support paid to a competitive ETC, such as U.S. Cellular, is measured. U.S. Cellular will receive support payments on a per customer basis only for those customers that it actually serves on a non-resale basis.[56] If it does not serve the customers, U.S. Cellular will not collect support payments. Furthermore, in the areas served by a Tier I carrier, such as AT&T Missouri, when a competitive ETC takes a customer away from the incumbent carrier, it also takes the incumbent's support payment, resulting in no net increase in the amount of support paid by the fund.[57] Overall, there is

[55] Transcript, page 789, lines 11-19.

[56] Transcript, page 208, lines 15-16.

[57] Transcript, page 208, lines 17-18.

no reason to believe that designating U.S. Cellular as an ETC will unduly burden the USF system.

After considering the evidence and arguments of the parties, the Commission concludes that designating U.S. Cellular as an ETC is in the public interest.

Has U.S. Cellular Complied with the Commission's ETC Rule?

The Commission has recently promulgated a new rule – 4 CSR 240-3.570 – governing the decision to grant an application for ETC designation. Various parties contend that U.S. Cellular has failed to comply with one or more provisions of that rule. Some of the questions about compliance with the rule overlap with issues that the Commission has previously addressed in deciding that designating U.S. Cellular as an ETC is in the public interest. Those overlapping issues will be briefly addressed as they relate specifically to the rule.

In considering U.S. Cellular's compliance with the detailed requirements of its rule, the Commission emphasizes that the purpose of the rule is to guide applicants and the Commission in making a determination of whether it is appropriate to designate an applicant as an ETC. The Commission does not intend to use the rule to ensure that a wireless carrier can never be designated as an ETC.

Some parties contend that U.S. Cellular has failed to comply with Commission rule 4 CSR 240-3.570(2)(A)3G, which requires an applicant for ETC designation to make "a statement as to how the proposed plan would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur." That issue has already been addressed when the Commission